

# Notice of Allowability

Application No.

09/921,252

Examiner

Jessica R Baxter

Applicant(s)

HOVER ET AL.

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3731

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to After Final Amendment 20 April 2004.
2. ☒ The allowed claim(s) is/are 1-3,5-12 and 35-48.
3. ☒ The drawings filed on 02 August 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. Claims 1-3, 5-12 and 35-48 are allowed.
2. The following is an examiner's statement of reasons for allowance:

The prior art of record fails to disclose or suggest an intramedullary nail comprising a metal nail structure with a first window and an opening longitudinally spaced from the first window and a first spacer formed of a non-metal material. This limitation, in combination with all of the limitations of claim 11, makes the claim allowable over the prior art.

The prior art of record fails to disclose or suggest a bone support assembly comprising a bone support implant formed of metal, a first insert formed of a non-metal material separately from the bone support assembly, such that the first insert has a bone support implant contacting surface extending generally normal to the longitudinal direction of the bone support implant, the contacting surface contacts the bone support implant upon insertion of the first insert into the first window. This limitation, in combination with all of the limitations of claim 36, makes the claim allowable over the prior art.

The prior art of record fails to disclose or suggest a bone support assembly comprising a bone support implant formed of metal, a first insert formed of a non-metal material, wherein the bone support implant includes a first window and an opening spaced from the first window such that the first window and the opening are placed on the same side of the fracture. This limitation, in combination with all of the limitations of claims 41 and 45, makes the claims allowable over the prior art.

The prior art of record fails to disclose or suggest a bone support assembly comprising a bone support assembly comprising a bone support assembly comprising a

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bone support implant formed of metal, a first insert formed of a non-metal material separately from the bone support implant, and a second insert formed of a non-metal material separately from the bone support implant and the first insert and having different mechanical or chemical treatment properties than the first insert. This limitation, in combination with all of the limitations of claim 43, makes the claim allowable over the prior art.

The prior art of record fails to disclose or suggest a bone support assembly comprising a bone support implant formed of metal having a first window and an opening defined in the bone support implant and positioned adjacent the first window, the window being longitudinally spaced from the window such that the window and the opening are placed on the same side of a fracture; and a first spacer formed of non-metal material receivable in the first window. This limitation, in combination with all of the limitations of claim 45, makes the claim allowable over the prior art.

The prior art of record fails to disclose or suggest a bone support assembly comprising a bone support implant formed of metal with at least one window, a first spacer formed of non-metal material, and a second spacer formed separately from the first insert and having different mechanical or chemical treatment properties than the first spacer.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 703-305-4069. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott or Shaver can be reached on 703-308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter  
Examiner  
Art Unit 3731

jrb

  
**DAVID O. REIP**  
**PRIMARY EXAMINER**